VZCZCXYZ0006
RR RUEHWEB

DE RUEHMU #0562/01 1561950
ZNR UUUUU ZZH
R 051950Z JUN 09
FM AMEMBASSY MANAGUA
TO RUEHC/SECSTATE WASHDC 4213
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC

UNCLAS MANAGUA 000562

SENSITIVE
SIPDIS

DEPT PASS USTR
DEPT FOR EEB/CIP/BA TIM FENTON
DEPT PASS FCC TOBERT TANNER
DEPT PASS DOC/ITA/OTEC ANDREW BENNETT

E.O. 12958: N/A
TAGS: ECPS ECON EINV ETRD TINT NU
SUBJECT: NICARAGUA TELECOM SECTOR: MARKET OPEN, BUT
COMPETITION 'SLIM'

REF: A. MANAGUA 02474
¶B. MANAGUA 01343

¶1. (SBU) Summary: The head of Nicaragua's telecommunications regulator, TELCOR (Instituto Nicaraguense de Telecomunicaciones y Correos), announced in April 2009 that it would begin consultations to reform Nicaragua's telecom legislation, known as Law 200. As currently drafted, Law 200 fails to foster competitive investment in the sector, as envisioned by CAFTA-DR. In fixed-line telephony, the former government-operated telecommunications company Enitel, now owned by Mexican billionaire Carlos Slim's America Movil, has 100% of the market and operates a de-facto monopoly. The wireless sector is dominated by a duopoly, with America Movil's Claro competing against Telefonica's Movistar for market share. TELCOR has drafted a revised telecom law, but the National Assembly's Commission on Infrastructure and Public Services is working on its own version, which would create a new regulatory body whose members are chosen by the Assembly rather than the President. Until a new law is passed, media companies in Nicaragua continue to operate in an uncertain environment. End Summary.

¶2. (SBU) Nicaragua's complementary agenda to improve the business climate under CAFTA-DR includes legislation to reform the telecommunications sector. There has been no progress on this score since the free trade agreement was signed in April 2006. The national telecom regulator, TELCOR, and the National Assembly's Commission on Infrastructure and Public Services are currently drafting revisions to the country's telecom legislation. Threatening to derail proposed reform is the issue of whether legislation will protect or endanger existing media licenses. Radio and television stations, often highly critical of the Ortega Administration, fear that the reform process under discussion presents an opportunity to limit or deny them licenses (see paragraphs 10-11).

Still Waiting On New Telecommunications Legislation
-- ------

¶3. (U) TELCOR Executive President Orlando Castillo announced in April 2009 that the Government of Nicaragua (GON) would begin consultations to reform Nicaragua's "General Law of Telecommunications and Postal Services," Law 200. Castillo said he would deliver an outline of the proposed reforms to the Executive Branch by the end of June. The National Assembly's Commission for Infrastructure and Public Services announced the same week that it is working on its own draft of a new telecommunications law. Media reports indicate that the National Assembly's draft will include a plan to create a new regulatory institution, the Superintendent of

Telecommunications and Postal Services (SITEL), whose members would be chosen by the Assembly rather than appointed by the President. A 2005 attempt by the National Assembly to create a Superintendent of Public Services (SISEP) with authority over telecommunications failed after a confrontation between the National Assembly and President Bolanos ended in a stalemate (Ref A).

¶4. (U) As part of its Rural Telecommunications Project for Nicaragua, the World Bank provided $350,000 in technical assistance to TELCOR to help draft a new regulatory framework for the sector. World Bank Project Director Eloy Vidal told us that a draft law developed by TELCOR and the World Bank has been completed, and that he is cautiously optimistic it will be approved. The Nicaraguan National Assembly, meanwhile, received technical assistance from the United Nations Development Program (UNDP) to revise Law 200. The primary difference between the two draft laws is reportedly the National Assembly's plan to create a new regulatory institution with authority over TELCOR.

¶5. (U) Law 200, as currently drafted, allows for privately owned and operated telecommunications companies, but falls short of fostering competitive investment in landline telephony as envisioned by CAFTA-DR. One TELCOR executive described the 1995 law as "obsolete" and incapable of addressing technological advances. For example, while TELCOR regulates interconnection charges, the former government-operated telecommunications company Enitel, now owned by Mexican billionaire Carlos Slim's America Movil (the dominant cellular telephone company in Nicaragua) still controls switching for all cellular services and owns the local loop ("the last mile"). When TELCOR issued regulations in 2006 that mandated unbundling the local loop, consistent with Article 13.4 of CAFTA-DR's Chapter 13 on telecommunications, Enitel refused to unbundle the loop. This created a strong disincentive for potential investors in the sector, effectively preventing liberalization of the market for telephony. (Note: the local loop refers to the physical wire between a telephone exchange and a customer's premises; the "unbundling" of that loop allows competing service providers to rent the existing infrastructure and access residential customers.)

The Shift Toward Cellular

¶6. (U) Having the second lowest access to fixed-line telephony in Latin America on a per capita basis, Nicaragua leapfrogged into mobile communications during the last decade. Today, Nicaragua's mobile telephone penetration rate is greater than 50%, surpassing that of Honduras, Peru, Haiti, and Cuba. Cell phones now exceed the number of fixed lines by more than ten to one. Since 2004, the mobile market has been growing at an annual rate of 60%. Most recent investment in the sector has focused on expanding service to the poorer social strata throughout the country. The wireless sector is dominated by a duopoly between America Movil's Claro and Telefonica's Movistar services. Claro leads with a 70% market share to Movistar's 30%. Internet penetration has tripled since 2000, to 2.7% of the population in 2008. About one-sixth of these are broadband users. Both companies deploy the broadband mobile telecommunications platform standard known as UMTS/HSDPA (Universal Mobile Telecommunications System/High-Speed Downlink Packet Access), allowing them to introduce 3G wireless service in 2008. High-end wireless service and broadband networks can be found in urban areas. While investment in wireless continues, investment in landline service is minimal.

The Story of Deregulation

¶7. (U) Passed in 1995 under President Violeta Chamorro, Laws 200 and 210 opened the state-run telecommunications sector to private investment and to the eventual privatization of Enitel, the state-owned telephone company. The government sold a 40% stake in Enitel in 2001 to an international

consortium, which later became Megatel. The Government of Nicaragua (GON) sold the remaining stake to America Movil in December 2003. In 2004, America Movil bought Megatel's share to become the sole owner of Enitel, despite opposition from telecom regulator TELCOR. Enitel now operates a de-facto monopoly as the country's only landline operator and the dominant cellular provider.

¶8. (SBU) TELCOR tried to liberalize the telecom industry at the end of 2004, but Enitel successfully appealed, delaying deregulation until 2005, when Enitel's exclusive right to provide landline telephone services expired under Law 210. Since 2005, any company has been free to bid on a license to provide landline services through a process even TELCOR itself describes as lengthy and cumbersome.

¶9. (U) In 2006, consistent with the country's obligations under CAFTA-DR, TELCOR sought to amend the country's telecommunications regulations. TELCOR wanted to force the unbundling of the local loop so that companies interested in investing in the landline sector would have access to the existing network elements. Enitel filed an injunction against the GON, charging discrimination and arguing that the new regulations were impermissible under Law 200, the governing telecommunications legislation. The Nicaraguan Supreme Court agreed with Enitel, sending the government back to the drawing board. Since 2007, the Ortega Administration has decided to forego developing new regulations in favor of a complete sectoral reform.

A Political Battle Brewing Over Media Licensing
--- --

¶10. (SBU) TELCOR also issues licenses for radio and television frequencies. Here, political battle lines are being drawn. TELCOR's President, Orlando Castillo, is the former Finance Director for Channel 4, a television station owned by President Ortega and managed by his son. TELCOR headquarters prominently displays FSLN (Sandinista National Liberation Front) propaganda. Moreover, TELCOR performs a public relations service to the President, his wife, and the FSLN by financing and staging Ortega's many town hall meetings, broadcast in their entirety by Channel 4. The FSLN has sharply criticized independent media in Nicaragua, and took the extreme measure in 2008 of paying protesters to occupy Managua's traffic circles to denounce what it perceived as unfair treatment by the media (Ref B). Protests by FSLN and government-supported Citizen Power Councils (CPC's) in front of media outlets were also common in 2008.

¶11. (SBU) The reform of Law 200 promises to include the renewal of existing media licenses, an issue which has become politically charged. Media outlets in Nicaragua have operated since 2008 without knowing when their licenses will expire. The National Assembly temporarily extended the licenses, pending the passage of legislation to replace Law 200, after a furor erupted over TELCOR's failure to reply to requests for license extensions from several independent media outlets. TELCOR's inaction, as the expiration date of the licenses grew near, was interpreted by voices opposed to the governing FSLN as a plan to let the licenses expire and not renew them. In 2007, opposition candidate Eduardo Montealegre had introduced a bill to the National Assembly to extend media licenses by 10 years, but the FSLN blocked it.

¶12. (SBU) Comment: While technically open to investment, Nicaragua's telecom sector lacks the regulatory environment that would foster a free and competitive market. To fully comply with the spirit of CAFTA-DR, the National Assembly needs to pass an improved law on telecommunications. While the government has suggested that such legislation will move quickly, we believe that the National Assembly is technically unprepared to reform telecommunication legislation at this time. The issue of renewing radio and television licenses is likely to make any reform effort lengthy and highly controversial.
CALLAHAN